

DEC 30 2010

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF

Sherco Construction, Inc., a Montana
Corporation, Tom Carlisle, individually and
Ty Malek, individually,

Respondents.

)
)
)
)
)
)
)

CASE NO. INS-2010-140

**TEMPORARY CEASE AND DESIST
ORDER**

The Commissioner of Securities and Insurance in her capacity as State Auditor of the state of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.* (Code), hereby issues the following allegations of fact, conclusions of law, order and notice of right to a public hearing:

ALLEGATIONS OF FACT

1. Respondent Sherco Construction (Sherco), offers comprehensive roof repair and replacement services. Sherco is located at 383 Alder St, Highwood, MT 59450. Respondents Ty Malek and Tom Carlisle were agents of Sherco at all times material hereto.
2. As part of its roof repair services, Sherco states that it is fully staffed to handle insurance negotiations. See Exhibit A attached hereto.
3. On or about September, 2010, Respondent Carlisle told the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), Sherco only helps facilitate insurance claims and does not require a power of attorney.

4. Sherco solicited business in the Lewistown area by going door to door and asking people about roof replacement. They also used signage to garner business.

5. In exchange for its services, the insureds assign Sherco all insurance payments if coverage exists. Contractual language calls for all checks from the insurance company to be issued jointly to the insured and to Sherco. The contract between the homeowner and Sherco triggers when the terms are accepted by the insurance company and Sherco. The Contract language is as follows: "This agreement does not obligate the homeowner or Sherco Construction in any way unless approved by the insurance company and accepted by [Sherco]."

6. Sherco maintains that it works with the homeowner's insurance to get the correct repair work done for a fair price. If Sherco's estimate is higher than the insurance company's estimate, Sherco then works with the company to arrive at a fair price for the repair using Xactimate¹.

7. No price is set until after Sherco and the insurance company meet and establish what the insurance company will pay. The contract language is as follows:

When the "agreed Price" is determined it shall become the final contract price of \$_____ and homeowner authorizes SHERCO CONSTRUCTION to obtain labor and material in accordance with the "agreed price" and the specifications set out herein...

8. Sherco works on behalf of the homeowner to obtain the homeowner's wishes as to the scope of damages and repairs, including going to insurance companies when insurance companies deny coverage for particular areas of concern.

9. Sherco suggests to homeowners to go to appraisal when the homeowner feels the insurance company is not covering the claim adequately for the damages the homeowner has incurred. Respondent Carlisle also indicated he has no problem with going to appraisal when there is a question about damage or necessary repairs, stating "[he] will win."

¹ Xactimate is a software product created to assist insurance appraisers and adjusters.

10. Sherco Construction is not licensed by the state of Montana to transact insurance business in any capacity. Respondents Tom Carlisle and Ty Malek are not licensed to perform adjusting or insurance consulting in the state of Montana in any capacity.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq.*
2. Mont. Code Ann. § 33-17-102(9) defines “Individual” as a natural person.
3. Respondents Carlisle and Malek are “Individual[s]” as defined by Mont. Code Ann. § 33-17-102(9).
4. Mont. Code Ann. § 33-17-102(19) defines “Person” as an individual or business entity and Mont. Code Ann. § 33-1-202(3) defines “Person” as an individual, insurer, company, association, organization, partnership, business trust, corporation, or any other legal entity.
5. Respondents Sherco Construction, Carlisle and Malek are “Person[s]” as defined by Mont. Code Ann. §§ 33-17-102(19) and 33-1-202(3).
6. Mont. Code Ann. § 33-17-102(20) defines “Public adjuster” as an adjuster employed by and representing the interest of the insured.
7. Respondents Sherco, Carlisle and Malek are “Public adjuster[s]” as defined by Mont. Code Ann. § 33-17-102(20) because they represent the interest of the insured during the claims process and accept an assignment of insurance proceeds for these services.
8. Pursuant to Mont. Code Ann. § 33-17-301, an individual may not act as or purport to be an adjuster unless licensed by the Commissioner.
9. Respondents Carlisle and Malek violated Mont. Code Ann. § 33-17-301 by acting as unlicensed public adjusters on behalf of Sherco Construction.

10. Mont. Code Ann. § 33-17-102(6) defines “Consultant” as an individual who makes recommendations or gives advice regarding an insurance policy, for a fee.

11. Respondents Carlisle and Malek are “Consultant[s]” as defined by Mont. Code Ann. §33-17-102(9) because they recommended that insureds file insurance claims and collected insurance proceeds for these recommendations.

12. Pursuant to Mont. Code Ann. § 33-17-502(2), a person may not evaluate any insurance policy or give advice with regard to any insurance policy and receive a fee for these services, without having a consultant license.

13. Respondents Sherco Construction, Tom Carlisle and Ty Malek violated Mont. Code Ann. § 33-17-502(2) by evaluating insurance policies and giving insurance advice to insureds without a consultant’s license while collecting insurance proceeds from those policies.

ORDER

Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Commissioner that the above-named Respondents committed acts constituting violations of the Code, including acting as unlicensed adjusters and consultants. Therefore, the Commissioner hereby orders Respondents to cease and desist any actions or activity wherein Respondents act in violation of the Montana Insurance Code.

NOTICE

Respondents are notified that the Commissioner has issued this Order temporarily ordering them to cease and desist violating the Code. If Respondents wish to contest the allegations herein, they shall make a written request for a hearing to Brett O’Neil of this office within 15 days of receipt of this order. The hearing shall then be held within 30 days of the Commissioner’s receipt of the hearing request unless otherwise agreed by the parties. **If no hearing is requested within 15 days of receipt**

of this order by Respondents, and the Commissioner orders none, this Cease and Desist Order shall become permanent.

Should Respondents request a hearing, they have the right to be accompanied, represented and advised by counsel. If the counsel Respondents choose has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 30th day of December, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance

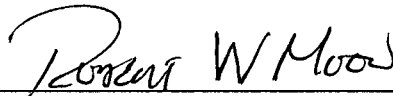

BY: Robert W. Moon
Deputy Insurance Commissioner



EXHIBIT A

Home Why Us? Residential Roofing Siding Windows Decks Storm Damage Metal Roofing Contact Us

Sherco Roofing**Rapid Response Team for storm damage mitigation.**

Weather related emergencies are an unfortunate fact of life and can't be avoided. Immediate action after a weather event will limit damages and minimize consequential damage caused by exposure to the elements.

If your roof was damaged by a storm, the Sherco Rapid Response Team will provide immediate, appropriate assistance anywhere in the United States.

Every member of the Rapid Response Team is experienced, knowledgeable, ready and equipped to put you back in business fast.

We're there when you need us.

One phone call gets us started . . .



Depend on Sherco to get you back in your home or business fast. We are fully staffed to handle all the details of your recovery such as:

- insurance negotiations
- material defect claims
- commercial roofing services
- soffit/fascia repair and replacement
- gutter repair and replacement

Put your trust in an industry leader!

The **Sherco Roofing** name means quality exterior products and services. We have extensive experience working with all types of commercial exterior configurations and materials manufacturers. We will ensure seamless damage mitigation, repair and restoration.

To get back in the game call (651) 462-1817

Hail Damage Fire Damage Water Damage



**Do I Have Hail Damage? . . .
... What Does It Look Like?**

Trust Us For your Hail Damage Inspections, Repairs and Insurance Claims Filings

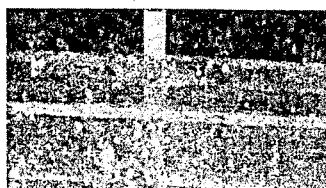
If you have been in hailstorm the most obvious damage you see is to cars. You see the damage immediately after the last ice nugget has fallen.

You're horrified because the once smooth surface is now riddled with dents and pits.

Most people do not ever consider that their home was damaged as well.

Your roof is as susceptible to hail damage as the hood of your car. When hail hits your roof it creates a bruise. This bruise may have even cracked the fiberglass membrane and can allow water to seep into your home. It may not leak the day after the storm but over time it will happen.

Composition Shingles



Minnesota
(651) 462-1817

Montana
(406) 899-4360

Free Inspections

Click Here



It's difficult to determine whether a shingled roof needs to be replaced after a hail storm because the damage is not readily evident.

Our hail damage specialists are specially trained and experienced to determine the damage and make corrective action.

We check the entire roof structure and gutter system. If we see a large amount of granules reroofing would be a consideration.

Granules aren't just for appearance purposes, they're there to protect the asphalt based roof product (the shingle). It doesn't take much of a hail storm to dislodge a bunch of granules, thereby exposing the asphalt and shortening the service life of your roof.

If your roof went through a hail storm but no damage was readily visible but that doesn't mean it isn't there. If enough granules were knocked loose, the sun will hit the exposed asphalt further damaging the roof and underlayment. The exposed asphalt will deteriorate and more granules will come loose. In a few months and after a few rains, the damage will be readily evident.

Many times hail storms produce visible damage, but beware, only a trained roofing hail damage specialist can uncover the real damage!

1999-2011 © YourWebPro, Inc. All rights reserved.

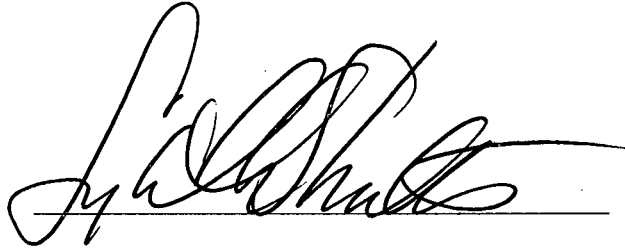
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 30th day of September, 2010, by US mail, certified, first-class postage paid, to the following:

Sherco Construction, Inc.
21833 Viking Blvd NE
Wyoming, MN 55092

Tom Carlisle
21833 Viking Blvd NE
Wyoming, MN 55092

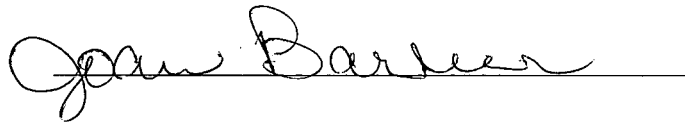
Ty Malek
383 Alder St.
Highwood, MT 59450

A handwritten signature in black ink, appearing to read "Ty Malek", is written over a horizontal line.

AMMENDED CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on Will Ballew, Esq., this 3rd day of January, 2011, by fax and U.S. mail to the following:

Will Ballew, Esq.
Spoon, Gordon & Ballew
800 S. 3rd St. W, Suite A
P.O. Box 8869
Missoula, MT 59807-8869

A handwritten signature in cursive script, reading "Joan Barber", is written over a horizontal line.